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# COLUMBIA LAW REVIEW.

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## A BULWARK TO THE STATE POLICE POWER—THE UNITED STATES SUPREME COURT.

Court decisions "based on the individualist theories of a century ago," says a recent political scientist,<sup>1</sup> are no longer in harmony with modern conditions. The tendency of the present-day mind is unquestionably to tolerate increased restriction of the individual by the State, in the interest of the general public welfare. It is highly important, therefore, that the layman should comprehend how far the courts are embodying in their decisions this tendency.

The history of English law is one of struggle between two motives,—a desire to protect the rights of the individual, and a desire to extend the rights of the public. Whether at common law or under a written constitution, a man's rights of property or of action are limited by the correlative rights of others, on which he may not legally infringe. It is by extending the rights of others, as individuals, that the courts have developed the common law of torts; and the legislatures, the statutory law of torts. It is by extending the rights of others, bonded together as the State, that the courts have developed the law of the State police power; and the legislatures, the criminal law. The foundation of the doctrine of the State police power is that every man must hold his property and conduct his life to a certain reasonable extent in trust for the benefit of the public; and that such a trust, if reasonable, may be enforced by the legislature by appropriate legislation passed under its general police power.<sup>2</sup> What is reasonable may vary at different

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<sup>1</sup>The Supreme Court and Unconstitutional Legislation, by Blaine Free Moore (1913).

<sup>2</sup>Thus Allen, J., in *Com. v. Gilbert* (1893) 160 Mass. 157, says:—"All property is acquired and held under the tacit condition that it shall not be so used as to destroy or greatly impair the public rights and interests of the community."

eras and under different conditions. The rights of an individual will vary, therefore, and will be expanded or compressed according to the extent to which the courts shall hold State legislation to lie within or outside the scope of the police power. To fix the line, beyond which the legislature cannot go without infringing on the constitutional rights of the individual is, today, one of the most difficult tasks of a court. For as a judge of the Supreme Court, closely in sympathy with modern views, has frequently pointed out, "all legal lines are more or less arbitrary as to the precise place of their incidence, although the distinctions of which they are the inevitable outcome are plain and undeniable."<sup>3</sup> "Difference of degree is one of the distinctions by which the right of the Legislature to exercise the police power is determined."<sup>4</sup> "Any distinction, no matter how sensible and how plain, leads at last to a line which is worked out by the contact of decisions clustering around the opposite poles, and which may seem arbitrary if we attend to it alone and not to the nature of the groups which it divides."<sup>5</sup> "The question is one of degree, and sooner or later we reach a point at which the Constitution applies, and forbids physical appropriation and legal restrictions alike unless they are paid for."<sup>6</sup>

Where questions as to rights depend on matters of "degree," and of "distinction," it is of vital importance to the individual and to the public to know in what direction lies the general trend of the judicial mind.

Under the present prevailing anti-individualism, there can be no doubt that the test of the progressiveness of a court is the degree of remoteness of the line fixed, within which the legislature shall have scope to legislate without being held to infringe on the Constitution. Consequently, any court which recognizes wide and liberal bounds to this State police power is to be deemed in touch with the temper of the times.

Before accepting the remedies of those who wish to reform the courts, in order, as they claim, to make them more consonant with modern sentiments and conditions, sociological and economic, it is highly important to know the exact facts as to the existence of the evil or defect, for which the cure is proposed.

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<sup>3</sup>Holmes, J., in *Lincoln v. Street Com.* (1900) 176 Mass. 210, 213.

<sup>4</sup>Holmes, J., in *Rideout v. Knox* (1889) 148 Mass. 368, 372.

<sup>5</sup>Holmes, J., in *Smith v. American Linen Co.* (1898) 172 Mass. 227, 229.

<sup>6</sup>Holmes, J., in *Bent v. Emery* (1899) 173 Mass. 495, 496.

In an article in the April number of the COLUMBIA LAW REVIEW,<sup>6a</sup> I pointed out that so far as the United States Supreme Court was concerned, the evil condition of dissonance did not exist; and that the Court instead of being an obstacle in the path of progressive State legislation, had been found its consistent supporter,—at least in cases appealed under the “due process” and “equal protection” clauses of the Constitution.

An analysis of the cases showed that out of over 560 decisions rendered under those clauses in the past twenty-five years (1887-1911), the Supreme Court had held invalid only three State laws involving a social or economic question of the kind included under the phrase “Social Justice” legislation; and that moreover it had so held invalid only 34 other State laws involving questions of taxation or of private property rights.<sup>7</sup> A closer analysis will show that out of these 34 invalid statutes only 14 were passed in the exercise of the State police power,—the remaining 20 being enacted in the exercise of the State taxing power, etc.

In other words, in this great and vitally important class of cases, the Court has settled the boundary line which separates the end of the police power and the beginning of the Constitutional guaranties, overwhelmingly in favor of the State as against the individual (the individual, it may be noted, being, in the vast majority of the cases, a corporation).<sup>8</sup>

“Due process” and the “police power” both being indefinite terms, the Court has exercised a wide discretion in enlarging the scope of both in favor of the State.

There are, however, two other clauses of the Constitution under which the extent of the State police power has been tested by

<sup>6a</sup>13 COLUMBIA LAW REVIEW, 294; reprinted as Senate Document No. 30, 63rd Congress, First Session.

<sup>7</sup>To the latter should perhaps be added one further case (making 35 instead of 34), *Willcox v. Consol. Gas Co.* (1909) 212 U. S. 19, in which a comparatively unimportant part of a New York statute was held invalid, the main statute being upheld.

<sup>8</sup>If the prior years (1868-1886) had been taken (and the whole period of the decisions on the Fourteenth Amendment thus included) it would have been found that the Court in those years did not hold invalid a single State law enacted under the police power and dealing with “social justice” legislation, unless the Chinese laundry act of California in 1885 and the negro jury exclusion acts of West Virginia and Virginia in 1879, of Delaware in 1881, and of Kentucky in 1883 can be so termed, these laws being held invalid as denying the “equal protection of the laws” guaranteed by the Constitution.

See *Yick Wo v. Hopkins* (1885) 118 U. S. 356; *Strauder v. West Virginia* (1879) 100 U. S. 303; *Ex parte Virginia* (1897) 100 U. S. 339; *Neal v. Delaware* (1881) 103 U. S. 370; *Bush v. Kentucky* (1883) 107 U. S. 110.

parties attacking the validity of State laws, viz: the "impairment of obligation of contract" and the "regulation of commerce among the several States" clauses.

What has been the tendency of the Court in these classes of cases?

It is to be noted that these constitutional terms are not as indefinite or as incapable of exact delimitation as the term "due process." It is to be expected, therefore, that in attacks on legislation based on these clauses, there would be less room for exercise of discretion by the Court, in holding a statute to fall on this or the other side of the dividing line. It will be found, nevertheless, that even in cases brought under these latter clauses, the Court has a record substantially as liberal in support of the State police power, as in the other class of cases. Therefore, even if the accusation be well founded that there are certain State courts narrow and unprogressive in their tendencies, and prone to restriction of the State police power, the United States Supreme Court will be found to constitute a bulwark to that power, whenever that Court can be invoked.

If any added remedy is needed to relieve a State from a too timid or too conservative State court, an ample remedy can be provided simply by broadening the present Federal Judiciary Act, so as to permit appeals to the United States Supreme Court in cases where the State court has held the State law unconstitutional (such appeals being now confined to cases where the State court has upheld the State law). Such a remedy will be simpler, less revolutionary, and, in view of the past record of the United States Supreme Court, fully as effective, as the radical recall of judicial decisions.<sup>9</sup>

The need of such an amendment to the Judiciary Act has become the more imperative, since the enactment by Congress of the recent Act of March 4, 1913.<sup>10</sup> Heretofore, it has frequently been possible to bring the question of the constitutionality of a State law before the United States Supreme Court in a suit begun in the Federal Circuit Court, as an appeal lay from the decision of the inferior Federal Court whether such decision upheld or set aside

<sup>9</sup>It is to be noted that it is only in cases of the exercise of the "police power" by the State, that recall of judicial decisions is advocated—See Majority Rule and the Judiciary by William A. Ransom (1912) p. 114, citing the originator of the proposed reform.

<sup>10</sup>See Act of March 4, 1913, entitled "An Act restraining the issuance of interlocutory injunctions to suspend the enforcement of the Statute of a State, etc.," amending the Judiciary Act of March 3, 1911.

the State law. Under the recent act of Congress, if any suit is brought in an inferior Federal court involving an injunction against proceedings under any State law or under any order made by an administrative board or commission created by and acting under a State law, all proceedings to restrain the execution of such statute or order in the Federal court shall be stayed, if there shall have been brought and be pending in the court of the State a suit involving such State law. In view of this, fewer cases involving State statutes will be likely to reach the United States Supreme Court from the inferior Federal courts; and it will in the future be increasingly difficult to obtain the opinion of that Court on the validity of any State statute except in cases brought on writ of error to the State courts. It will become the more important, therefore, that the facility of appeal from the State courts be increased; and that the scope of such appeal be extended, so as to allow the United States Supreme Court to apply its progressive and broadening views to the construction made of the Constitution by any narrow-minded State courts, if such there be.

In the following summary of the attitude of the United States Supreme Court towards the State police power in cases arising under the obligation of contract and interstate commerce clauses of the Constitution, a period of forty years (1873-1912) has been taken so as to correspond practically with the whole period covered by the Court's decisions as to "due process" under the Fourteenth Amendment.<sup>11</sup> It is important to note that a large proportion of the State laws<sup>12</sup> attacked under these clauses was enacted in the exercise of the taxing power by the State, and not of the police power. There is a marked difference between the attitude of the Supreme Court towards mere tax laws, and its tendencies when passing upon State regulative legislation enacted for the public welfare under the police power.

### OBLIGATION OF CONTRACT CASES.

In the past forty years,—1873 to 1912,—the Supreme Court has decided about 320 cases in which State legislation was at-

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<sup>11</sup>The Fourteenth Amendment was declared in force July 28, 1868; the first United States Supreme Court decision under it was the *Slaughterhouse Cases* (April 14, 1873) 16 Wall. 36.

<sup>12</sup>Throughout this article the term "State law" or "State statute" is intended to include a State constitution, municipal ordinance or an order issued by a State board, officer, or commission by virtue of some State statute; in other words, all legislative forms of State activity.

tacked on the ground of impairment of obligation of contract.<sup>13</sup> Of these, about 160 were concerned with legislation which might, in general, be said to have been enacted for the public welfare under the State police power; while about 110 were concerned merely with questions of taxation or private or municipal indebtedness. The remaining cases (about 50) simply decided that (a) the action of the State was merely a breach of contract and not a law impairing obligation; (b) that a judgment of a court does not constitute an impairment; (c) that the proceedings involved did not constitute a contract; (d) that the jurisdiction of the court did not appear: these cases therefore have no bearing on the attitude of the Court towards State statutes, and need not be considered in this connection.

#### POLICE POWER LEGISLATION.

The broad-minded and thoroughly progressive attitude of the Court towards legislation of the first class mentioned above, is readily seen upon examination of the following record of its decisions, classified and in detail.

##### *Laws Affecting General Property Rights and Business.*

The Supreme Court has upheld under the State police power anti-lottery laws, anti-trust laws, and legislation affecting the business and property rights of members of the community in general, in 15 cases as follows:—

Minnesota law validating deeds (1875); Massachusetts prohibition act forbidding sale and manufacture of liquor (1878); Mississippi anti-lottery act (1880); Minnesota dam act (1897); Kentucky anti-lottery act (1897); Texas land forfeiture act (1902); South Carolina creek obstruction dam act (1905); Georgia non-resident meat-packers agent act (1905); Oregon change of street grade act (1906); Connecticut act as to condemnation of minority railroad shares (1906); Arkansas anti-trust law (1909); Kentucky negro segregation law (1908); Connecticut law restricting interest on small loans (1910); Massachusetts unclaimed bank deposit act (1911); New York ordinance as to advertising on street vehicles (1911).<sup>14</sup>

<sup>13</sup>Cases included in the following volumes of reports of the United States Supreme Court, 15 Wall. to 225 U. S. inclusive. In the previous 83 years (1789-1872) the Court decided only about 85 cases on the question of obligation of contract.

<sup>14</sup>*Randall v. Kreiger* (1875) 23 Wall. 137; *Boston Beer Co. v. Massachusetts* (1878) 97 U. S. 25; *Stone v. Mississippi* (1880) 101 U. S. 814; *St. Anthony Falls etc. Co. v. Board* (1897) 168 U. S. 349; *Douglas v.*

*Laws Regulating the Business and Property of Public Service Corporations.*

The Supreme Court has upheld, under the State police power, legislation affecting the property rights and regulating the business, obligations and existence of railroads, gas, water and other public service corporations, and imposing new obligations on them, in 31 cases (other than tax cases), as follows:—

New York act as to State railroad directors (1873); Virginia ordinance against engines in streets (1878); Georgia act establishing new bridge and ferry (1880); Connecticut act requiring railroad station stops (1881); Louisiana law as to sale of waterworks (1882); Massachusetts repeal of a railroad charter (1882); Pennsylvania canal company reorganization act (1883); Mississippi railroad regulation law (1886); Pennsylvania railroad damage act (1889); Illinois riparian lands act (1892); New York electrical subway act (1892); New York railroad reorganization law (1893); Connecticut grade-crossing removal act (1894); Kentucky anti-railroad consolidation law (1896); Minnesota anti-railroad consolidation law (1896); Missouri railroad fire liability act (1897); Nebraska law requiring railroad to repair viaduct (1898); Texas constitution as to railroad grants (1898); New York railroad land condemnation act (1900); Minnesota gaslight-post ordinance (1901); Illinois water company ordinance (1901); Kentucky railroad long and short haul law (1902); Wisconsin act as to claims of water company against a city (1903); Louisiana act imposing cost of change in pipe location on gas company (1905); Massachusetts act abrogating contract between city and railway (1905); Illinois act compelling railroad to pay for lowering tunnel (1906); Connecticut act imposing cost of paving on street railway (1906); New Jersey act forbidding water company to divert water into another State (1908); Minnesota act requiring railroad to repair viaduct (1908); Kansas order as to increased train service (1910); Indiana act requiring interlocking crossings on railroads (1911).<sup>15</sup>

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Kentucky (1897) 168 U. S. 488; *Wilson v. Standefer* (1902) 184 U. S. 399; *Kehrer v. Stewart* (1905) 197 U. S. 60; *Manigault v. Springs* (1905) 199 U. S. 473; *Mead v. Portland* (1906) 200 U. S. 148; *Offield v. N. Y. & N. H. R. R.* (1906) 203 U. S. 372; *Hammond Packing Co. v. Arkansas* (1909) 212 U. S. 322; *Berea College v. Kentucky* (1908) 211 U. S. 45; *Griffith v. Connecticut* (1910) 218 U. S. 563; *Provident Institution for Savings v. Malone* (1911) 221 U. S. 660; *Fifth Ave. Coach Co. v. New York* (1911) 221 U. S. 467.

<sup>15</sup>*Miller v. New York* (1873) 15 Wall. 478; *Railroad Co. v. Richmond* (1878) 96 U. S. 521; *Wright v. Nagle* (1880) 101 U. S. 791; *N. Y. & N. H. R. R. v. Hamersley* (1881) 104 U. S. 1; *New Orleans v. Morris*



The Court has held invalid, as impairing the obligation of contract, only one statute of this nature: Indiana act requiring railroad to pay part tolls to the State (1904).<sup>16</sup>

*Laws as to Rates of Public Service Corporations and as to Construction of Municipal Plants.*

The Supreme Court has upheld legislation regulating the rates of railroad, gas, electric light and water companies, and legislation authorizing the construction of municipal public service plants, and repealing charters of public service corporations, in 22 cases, as follows:—

Illinois act removing tollgates and making streets public (1878); California water rates act (1884); Pennsylvania water works act (1887); Georgia railroad rate law (1888); Minnesota railroad rate law (1890) (1890) (but held unconstitutional under Fourteenth Amendment); Alabama act regulating water works monopoly (1891); Ohio municipal gas plant act (1892); Illinois regulation of water rates (1901); Florida municipal electric light plants act (1902); New York municipal water works act (1902); Alabama constitution revoking exclusive franchise to water company (1902); Tennessee water rates ordinance (1903); Missouri municipal electric light plant act (1903); Kentucky water rates ordinance (1903); California water rates reduction act (1904); Illinois gas rates reduction act (1904); Michigan railroad rates act (1904); Idaho municipal water plant act (1904); Tennessee municipal

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(1882) 105 U. S. 600; *Greenwood v. Union Freight R. R.* (1882) 105 U. S. 13; *Gilfillan v. Union Canal Co.* (1883) 109 U. S. 401; *Stone v. Farmers etc. Co.* (1886) 116 U. S. 307; *Penn. R. R. v. Miller* (1889) 132 U. S. 75; *Illinois etc. R. R. v. Illinois* (1892) 146 U. S. 387; *N. Y. Electric Lines Co. v. Squires* (1892) 145 U. S. 175; *New York v. Cook* (1893) 148 U. S. 397; *N. Y. & N. E. R. R. v. Bristol* (1894) 151 U. S. 556; *L. & N. R. R. v. Kentucky* (1896) 161 U. S. 677; *Pearsall v. Gt. No. R. R.* (1896) 161 U. S. 646; *St. Louis etc. R. R. v. Mathews* (1897) 165 U. S. 1; *C. B. & Q. R. R. v. Nebraska* (1898) 170 U. S. 57; *Galveston etc. R. R. v. Texas* (1898) 170 U. S. 226; *Adirondack R. R. v. New York* (1900) 176 U. S. 335; *St. Paul Gaslight Co. v. St. Paul* (1901) 181 U. S. 142; *Rogers Park Water Co. v. Fergus* (1901) 180 U. S. 624; *L. & N. R. R. v. Kentucky* (1902) 183 U. S. 503; *Oshkosh Water Co. v. Oshkosh* (1903) 187 U. S. 437; *N. O. Gas Co. v. N. O. Drainage Com.* (1905) 197 U. S. 453; *Worcester v. Worcester etc. Ry.* (1905) 196 U. S. 539; *West Chicago St. Ry. Co. v. Illinois* (1906) 201 U. S. 506; *Fairhaven etc. R. R. v. New Haven* (1906) 203 U. S. 379; *Hudson County Water Co. v. McCarter* (1908) 209 U. S. 349; *No. Pac. R. R. v. Minnesota* (1908) 208 U. S. 583; *No. Pac. R. R. v. Kansas* (1910) 216 U. S. 262; *Grand Trunk etc. R. R. v. Indiana* (1911) 221 U. S. 400.

<sup>16</sup>*Terre Haute etc. R. R. v. Indiana* (1904) 194 U. S. 579.

water plant act (1905); Texas half-fare school children act (1905); Michigan repeal of charter of water company (1910).<sup>17</sup>

The Court has held eight laws as to rates or municipal plants invalid on the ground that the legislation infringed on exclusive franchises or on contracts with the municipalities and thus impaired the obligation of contracts, in nine cases:—

Louisiana constitution relating to water company (1885) (1885) (1887); Kentucky act chartering gas company (1885); Oregon municipal waterworks act (1898); California city water rates ordinance (1900); Michigan street railway fare ordinance (1902); Mississippi city waterworks (1902) (1906) (1907) (one case); Ohio street railway rate reduction act (1904); Minnesota street railway rate reduction (1910).<sup>18</sup>

### *Stockholders' Liability Laws.*

The Supreme Court has sustained every statute imposing new or additional liability on stockholders in corporations, as follows: Missouri (1875); Missouri (1890); California (1901); Minnesota (1907); Kansas (1910).<sup>19</sup>

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<sup>17</sup>St. Clair Turnpike Co. v. Illinois (1878) 96 U. S. 63; Spring Valley Water Co. v. Shottler (1884) 110 U. S. 347; Lehigh Water Co. v. Easton (1887) 121 U. S. 388; Georgia etc. R. R. v. Smith (1888) 128 U. S. 174; Minn. etc. R. R. v. Minnesota (1890) 134 U. S. 467; and Chic. etc. R. R. v. Minnesota (1890) 134 U. S. 418; (the law in these cases being held unconstitutional, however, on another ground—lack of due process.) Stein v. Bienville Water Supply Co. (1891) 141 U. S. 67; Hamilton Gaslight Co. v. Hamilton (1892) 146 U. S. 258; Freeport Water Co. v. Freeport (1901) 180 U. S. 587; Capital City Light Co. v. Tallahassee (1902) 186 U. S. 401; Skaneateles Water Co. v. Skaneateles (1902) 184 U. S. 354; Bienville Water Supply Co. v. Mobile (1902) 186 U. S. 212; Knoxville Water Co. v. Knoxville (1903) 189 U. S. 434; Joplin v. S. W. Mo. Light Co. (1903) 191 U. S. 150; Owensboro v. Owensboro Waterworks Co. (1903) 191 U. S. 358; Stanislaus County v. San Joaquin etc. Co. (1904) 192 U. S. 201; People's Gaslight Co. v. Chicago (1904) 194 U. S. 1; Grand Rapids etc. R. R. v. Osborn (1904) 193 U. S. 17; Helena Waterworks Co. v. Helena (1904) 195 U. S. 383; Knoxville Water Co. v. Knoxville (1906) 200 U. S. 22; San Antonio Traction Co. v. Altgelt (1906) 200 U. S. 304; Calder v. Michigan (1910) 218 U. S. 591.

<sup>18</sup>New Orleans etc. Co. v. Louisiana etc. Co. (1885) 115 U. S. 650 (see New Orleans Water Works Co. v. Rivers (1885) 115 U. S. 674); cf. St. Tammany Water Works Co. v. N. O. Water Works Co. (1887) 120 U. S. 64; Louisville Gas Co. v. Citizens etc. Gas Co. (1885) 115 U. S. 683; Walla Walla v. Walla Walla Water Co. (1898) 172 U. S. 1; Los Angeles v. Los Angeles City Water Co. (1900) 177 U. S. 558; Detroit v. Detroit Citizens St. Ry. Co. (1902) 184 U. S. 368; Vicksburg Water Works Co. v. Vicksburg (1902) 185 U. S. 65; Vicksburg v. Vicksburg Water Co. (1906) 202 U. S. 453; Vicksburg v. Vicksburg Water Co. (1907) 206 U. S. 496; Cleveland v. Cleveland City R. R. (1904) 194 U. S. 517; Minnesota v. Minn. Street Ry. Co. (1910) 215 U. S. 417.

<sup>19</sup>Ochiltree v. R. R. Contracting Co. (1875) 21 Wall. 249; Hill v. Mutual Ins. Co. (1890) 134 U. S. 515; Pinney v. Nelson (1901) 183 U. S. 144; Bernheimer v. Converse (1907) 206 U. S. 516; Henley v. Myers (1910) 215 U. S. 373.

*Laws Regulating the Business and Property of Private Corporations.*

The Supreme Court has upheld, under the State police power, legislation affecting the property rights and regulating the business and obligations of corporations other than public service corporations, or of corporations in general, in 16 cases, as follows:—

Pennsylvania college charter amendment (1872); Illinois abatement of fertilizer company as a nuisance (1878); Illinois insurance law (1885); Kentucky removal of a college site law (1894); Ohio insurance company annual statement act (1894); New York condemnation act (1897); Texas act forfeiting corporation's right to do business (1900); Michigan insurance company stockholders vote act (1900); foreign corporation act of Wisconsin (1903); Missouri act as to assessment insurance company (1902); Minnesota act changing place of business of corporations (1904); Virginia act incorporating a company with same name as foreign society (1906); Virginia act revoking charter for illegal liquor sale (1908); New York insurance company reorganization act (1907); Oklahoma and Nebraska bank guaranty laws (1911) (1911).<sup>20</sup>

The Court has held invalid one statute of this kind: Tennessee act restricting a corporation in its right to do business (1911).<sup>21</sup>

*Laws Affecting Legal Processes and Remedies.*

The Supreme Court has upheld, as being within the State police power, statutes changing or providing new forms of remedy or legal process, or providing new statutes of limitation, in the following 32 cases:—

Kansas and Georgia limitation acts (1873) (1877); Arkansas service of process act (1877); South Carolina set-off act (1877); Tennessee acts abolishing or modifying rights to sue State (1877) (1880); Alabama acts repealing right to sue State (1880); Louisi-

<sup>20</sup>Jefferson College v. Wash. & Jeff. College (1872) 13 Wall. 190; N. W. Fertilizing Co. v. Hyde Park (1878) 97 U. S. 659; Chicago Life Ins. Co. v. Needles (1885) 113 U. S. 574; Bryan v. Board (1894) 151 U. S. 639; Eagle Ins. Co. v. Ohio (1894) 153 U. S. 446; Long Island Water Supply Co. v. Brooklyn (1897) 166 U. S. 685; Waters-Pierce Co. v. Texas (1900) 177 U. S. 28; Looker v. Maynard (1900) 179 U. S. 46; Wilson v. Standerfer (1902) 184 U. S. 399; Diamond Glue Co. v. U. S. Glue Co. (1903) 187 U. S. 611; Knights Templars Co. v. Jarman (1902) 187 U. S. 197; Wright v. Minn. etc. Ins. Co. (1904) 193 U. S. 657; Nat'l Council v. State Council (1906) 203 U. S. 151; Cosmopolitan Club v. Virginia (1908) 208 U. S. 378; Polk v. Mut. Res. Life Ins. Co. (1907) 207 U. S. 310; Noble State Bank v. Haskell (1911) 219 U. S. 104; Shallenberger v. First State Bank (1911) 219 U. S. 114.

<sup>21</sup>Bedford v. Eastern Bldg. Assn. (1901) 181 U. S. 227.

ana registry of judgments act (1880); Pennsylvania abolition of imprisonment for debt (1881); Wisconsin statute of limitations (1882); Texas repeal of usury act (1883); Louisiana mortgage recording law (1883); Louisiana tax limit act (1883); Illinois mortgage redemption act (1883); Missouri statute of limitations (1884); Tennessee set-off and bond-refunding law (1885); Minnesota insolvent law (1888); New York statute of limitations (1890) (1890) (1897); Virginia statute of limitations (1890); Tennessee lien law (1891); New York law regulating rate of interest on judgments (1892); Maryland insolvent law (1892); Louisiana mandamus law as added remedy to force corporation to comply with city contracts (1895); Texas escheat law (1896); North Carolina repeal of discretionary power of court to hear claims against State (1896); North Dakota mechanics' lien law (1901); Pennsylvania prescriptive rights as to ground rents act (1902); Texas act providing additional legal remedies (1903); Wisconsin act as to claims against city (1903); California mortgage redemption act (1904).<sup>22</sup>

The Court has also upheld the following 10 statutes affecting the status of municipal corporations or of individuals:—

Ohio act to change county seats (1880); Louisiana law forbidding listing of doubtful State obligations (1882); Illinois act validating a loan (1883); Missouri bond registration act (1883); Texas public land sales law (1889); Louisiana constitution declaring bonds still in State's possession (1893); Louisiana bond issue (1901); Michigan act creating new school district (1905); South Carolina law forbidding State treasurer to carry bonds on his

<sup>22</sup>*Sohn v. Waterson* (1873) 17 Wall. 596; *Terry v. Anderson* (1877) 95 U. S. 628; *Cairo etc. R. R. v. Hecht* (1877) 95 U. S. 168; *Blount v. Windley* (1877) 95 U. S. 173; *Tennessee v. Sneed* (1877) 96 U. S. 69; *Memphis etc. R. R. v. Tennessee* (1880) 101 U. S. 337; *S. & N. R. R. Co. v. Alabama* (1880) 101 U. S. 832; *Louisiana v. New Orleans* (1880) 102 U. S. 203; *Penniman's Case* (1881) 103 U. S. 714; *Koshkonong v. Burton* (1882) 104 U. S. 668; *Ewell v. Daggs* (1883) 108 U. S. 143; *Vance v. Vance* (1883) 108 U. S. 514; *Louisiana v. New Orleans* (1883) 109 U. S. 285; *Conn. Mut. Life Ins. Co. v. Cushman* (1883) 108 U. S. 51; *Mitchell v. Clark* (1884) 110 U. S. 633; *Amy v. Tax District* (1885) 114 U. S. 387; *Denny v. Bennett* (1888) 128 U. S. 489; *Wheeler v. Jackson* (1890) 137 U. S. 245; and *McFarland v. Jackson* (1890) 137 U. S. 258; *Turner v. New York* (1897) 168 U. S. 90; *Re Brown* (1890) 135 U. S. 701; *East Tenn. etc. R. R. v. Frazier* (1891) 139 U. S. 288; *Morley v. Lake Shore etc. R. R.* (1892) 146 U. S. 162; *Brown v. Smart* (1892) 145 U. S. 454; *N. O. etc. R. R. v. Louisiana* (1895) 157 U. S. 219; *Hamilton v. Brown* (1896) 161 U. S. 256; *Baltzer v. North Carolina* (1896) 161 U. S. 240; *Red River etc. Bank v. Craig* (1901) 181 U. S. 548; *Wilson v. Iseminger* (1902) 185 U. S. 55; *Waggoner v. Flack* (1903) 188 U. S. 595; *Oshkosh Water Works Co. v. Oshkosh* (1903) 187 U. S. 437; *Hooker v. Burr* (1904) 194 U. S. 415.

books as a debt (1907); Pennsylvania law enlarging municipality (1907).<sup>23</sup>

The Court has held invalid, as impairing the obligation of contract, seven statutes which were held to deprive creditors of substantial remedies for enforcement of the debts due to them; (of these seven, only three occurred within the last twenty-five years):—

Georgia act increasing the amount of property exempt from execution (1873); Georgia act restricting plaintiff's right to recover a debt until he pays a certain tax (1873); North Carolina act exempting property from execution (1878); Virginia act affecting remedy (1885); Ohio mechanics' lien law (1890); Kansas and Illinois mortgage foreclosure acts (1896) (1904).<sup>24</sup>

In addition to the above, the Court has held invalid legislation changing the obligation of individuals or municipalities in nine cases, (of which only four occurred within the last twenty-five years), as follows:—

South Carolina act creating a preference for the State as creditor of a State bank (1874); North Carolina act as to contracts payable in Confederate currency (1875); Virginia Confederate sequestration act (1878); Tennessee act voiding bank issues during the Civil War (1878); Wisconsin act abolishing an office held under a contract (1880); Oregon land act (1891); Texas constitution as to land grants (1898); Texas act repudiating land warrants (1900); New York elevated railway act (1905).<sup>25</sup>

The foregoing cases may be said to cover in general all the statutes enacted by State legislatures in the exercise of the State police power for the general welfare of the people, and which have been attacked on the ground of impairment of obligation of con-

<sup>23</sup>*Newton v. Commissioners* (1880) 100 U. S. 548; *N. Y. Guar. Co. v. Board of Liquidation* (1882) 105 U. S. 622; *Gross v. U. S. Mortgage Co.* (1883) 108 U. S. 477; *Hoff v. Jasper County* (1883) 110 U. S. 53; *Campbell v. Wade* (1889) 132 U. S. 34; *Bier v. McGeehee* (1893) 148 U. S. 137; *Board v. Louisiana* (1901) 179 U. S. 622; *Michigan v. Lowry* (1905) 199 U. S. 233; *Smith v. Jennings* (1907) 206 U. S. 276; *Hunter v. Pittsburg* (1907) 207 U. S. 161.

<sup>24</sup>*Gunn v. Barry* (1873) 15 Wall. 610; *Walker v. Whitehead* (1873) 16 Wall. 314; *Edwards v. Kearzey* (1878) 96 U. S. 595; *Effinger v. Kenney* (1885) 115 U. S. 566; *Toledo etc. Ry. v. Hamilton* (1890) 134 U. S. 296; *Barnitz v. Beverly* (1896) 163 U. S. 118; *Bradley v. Lightcap* (1904) 195 U. S. 1.

<sup>25</sup>*Barings v. Dabney* (1874) 19 Wall. 1; *Wilmington etc. R. R. v. King* (1875) 91 U. S. 3; *Williams v. Bruffy* (1878) 96 U. S. 176; *Keith v. Clark* (1878) 97 U. S. 454; *Hall v. Wisconsin* (1880) 103 U. S. 5; *Pennoyer v. McConaughy* (1891) 140 U. S. 1; *Houston etc. R. R. v. Texas* (1898) 170 U. S. 343; *Houston etc. R. R. v. Texas* (1900) 177 U. S. 66; *Muhlker v. N. Y. & H. R. R.* (1905) 197 U. S. 544.

tract. From the records, it would appear that, in this class of cases, statutes were found constitutional in 131 cases; 27 were found unconstitutional, the Court thus holding unconstitutional an average of about one statute of this nature every two years.

It is clear, therefore, that here also, as in the case of legislation attacked under the due process clause of the Fourteenth Amendment, the United States Supreme Court has been consistently liberal in its support of modern State legislation, enacted under the State police power.

#### TAXING POWER LEGISLATION.

In addition to the above 158 cases, there have been about 110 cases in which statutes were attacked as impairing obligation of contract; but these were concerned, however, merely with the subjects of taxation and of municipal or State obligations. Such decisions affecting merely the taxing power and individual property rights do not come within the class of statutes which the advocates of the recall of judicial decisions claim should be subject to their new remedy.

#### *Taxes on Corporations.*

The Supreme Court has upheld legislation taxing corporations, and has denied that the charters of such corporations taxed, or that the previous legislation regarding them, constituted a contract entitling them to exemption from taxation, in the following 50 cases:—

South Carolina railroad tax (1873); Delaware railroad tax (1874); Missouri railroad tax (1874); Pennsylvania railroad tax (1875); Michigan tax (1875); Illinois bank tax (1875); Georgia license tax on insurance companies (1876); Wisconsin railroad tax (1876); Georgia railway tax (1876) (1876); Virginia railroad tax (1877); Tennessee railroad tax (1878); Maine railroad tax (1878); Pennsylvania car license act (1880); South Carolina railroad tax (1879); Arkansas railroad tax (1879); Maryland tax on exempt bonds of other States (1882); Tennessee bank tax (1882); Tennessee tax (1883); Florida railroad tax (1883); Missouri ferry license fee (1883); Arkansas railroad tax (1884) (1885); West Virginia railroad tax (1885); New Jersey tax (1886); Louisiana railroad tax (1886); Tennessee railroad tax (1889); Louisiana tax (1891); Louisiana railroad tax (1892); Kentucky tax (1892); North Carolina railroad tax (1892); Missouri railroad tax (1894); Tennessee tax (1896); Tennessee constitution (1896); Mississippi

levee tax (1897); Louisiana constitution tax (1897); Kentucky bank tax (1899); Kentucky bridge tax (1899); Mississippi railroad tax (1901) (1901) (1901); Georgia tax (1901); New York succession tax (1902); Michigan railroad tax (1903); New York special franchise tax (1905); Tennessee tax (1908); Kentucky bank tax (1907); Missouri license tax (1908); Kentucky bank tax (1910); Virginia tax (1911).<sup>26</sup>

<sup>26</sup>After the year 1818 when the Court decided, in the Dartmouth College Case, a legislative charter to be a contract, many fears were expressed that such doctrine would doom all State legislation relating to corporations. In 1826, in the United States Senate, Martin Van Buren severely criticized the Court for its broad construction of the phrase "impairment of obligation of contract," and deplored the "tremendous sweep" which that construction had given to the jurisdiction of the Court. A decision of the Court in 1853 in *Piqua Branch of The State Bank of Ohio v. Knoop*, 16 How. 369 caused even greater fear in the United States lest the Supreme Court should become the engine of destruction of State legislation. In that case it was announced definitely that a State legislature had power to exempt corporations from taxation, so that a tax imposed by a later legislature was to be held an "impairment of obligation" of the contract of exemption, and therefore unconstitutional. Judge Campbell, in his dissenting opinion, violently attacked the decision as utterly subversive to the State powers. On how little ground these fears were based, may be seen from the actual record of the Court relative to statutes of this nature, as follows:—*Tomlinson v. Jessup* (1873) 15 Wall. 454; *Minot v. R. R.* (1874) 18 Wall. 206; *Trask v. Maguire* (1874) 18 Wall. 391; *Erie Ry. Co. v. Pennsylvania* (1875) 21 Wall. 492; *Tucker v. Ferguson* (1875) 22 Wall. 527; *Concord v. Portsmouth Sav. Bank* (1875) 92 U. S. 625; *Home Ins. Co. v. Augusta* (1876) 93 U. S. 116; *West Wisconsin Ry. v. Trempealeau County* (1876) 93 U. S. 595; *Ches. & Ohio R. R. v. Virginia* (1877) 94 U. S. 718; *Central R. R. etc. Co. v. Georgia* (1876) 92 U. S. 665; *S. W. R. R. v. Georgia* (1876) 92 U. S. 676; *Railroad Companies v. Gaines* (1878) 97 U. S. 697; *Maine Centr. R. R. v. Maine* (1878) 96 U. S. 499; *Union Ry. Co. v. Philadelphia* (1880) 101 U. S. 528; *Hoge v. Railroad Co.* (1879) 99 U. S. 348; *Railway Co. v. Loftin* (1879) 98 U. S. 559; *Bonaparte v. Tax Court* (1882) 104 U. S. 592; *Bank of Commerce v. Tennessee* (1882) 104 U. S. 493; *Memphis Gas Light Co. v. Shelby County* (1883) 109 U. S. 398; *L. & N. R. R. v. Palmes* (1883) 109 U. S. 244; *Wiggin Ferry Co. v. St. Louis* (1883) 107 U. S. 365; *Memphis R. R. v. Commissioners* (1884) 112 U. S. 609; *St. Louis etc. Ry. Co. v. Berry* (1885) 113 U. S. 465; *Ches. & Ohio R. R. v. Miller* (1885) 114 U. S. 176; *Given v. Wright* (1886) 117 U. S. 648; *Vicksburg R. R. v. Dennis* (1886) 116 U. S. 665; *Pickard v. East Tenn. etc. R. R.* (1889) 130 U. S. 637; *New Orleans v. N. O. Water Works Co.* (1891) 142 U. S. 79; *New Orleans etc. R. R. v. New Orleans* (1892) 143 U. S. 192; *Louisville Water Co. v. Clark* (1892) 143 U. S. 1; *Wilmington etc. R. R. v. Aldbrook* (1892) 146 U. S. 279; *Keokuk etc. R. R. v. Missouri* (1894) 152 U. S. 301; *Phoenix etc. Ins. Co. v. Tennessee* (1896) 161 U. S. 174; *Bank of Commerce v. Tennessee* (1896) 163 U. S. 416; *Ford v. Delta etc. Co.* (1897) 164 U. S. 662; *Grand Lodge v. New Orleans* (1897) 166 U. S. 143; *Louisville v. Bank of Louisville* (1899) 174 U. S. 439; *Henderson Bridge Co. v. Henderson* (1899) 173 U. S. 592; *Yazoo etc. R. R. v. Adams* (1901) 180 U. S. 1; *Ill. etc. R. R. v. Adams* (1901) 180 U. S. 28; *Gulf etc. R. R. v. Hewes* (1901) 183 U. S. 66; *Wells v. Savannah* (1901) 181 U. S. 531; *Orr v. Gilman* (1902) 183 U. S. 278; *Wisconsin etc. R. R. v. Powers* (1903) 191 U. S. 379; *New*

The Court has held statutes invalid in 18 cases as imposing taxes on corporations which were held specifically exempt from taxation under their charters or under previous legislation; (of these 18 cases, however, only nine occurred within the last twenty-five years):—

North Carolina railroad tax (1872); South Carolina railroad tax (1873) (1873); Missouri (1874); New Jersey (1877); Tennessee bank tax (1878); Illinois tax act (1879); Louisiana tax (1882); Tennessee (1886); Tennessee (1894); Tennessee bank tax (1896); Louisiana bank tax (1897); Minnesota railroad tax (1900); Louisiana license tax (1904); Michigan railroad tax (1906); Colorado foreign corporation license tax (1907); Georgia franchise tax (1910); Louisiana lottery tax (1886).<sup>27</sup>

#### *State and Municipal Taxes.*

The principal class of statutes which have been held invalid by the Supreme Court as in violation of this clause of the Constitution, has been that which includes the numerous laws by which States have endeavored to authorize the evasion of payment of bonds issued by the State, city, or county under some prior administration.

Statutes reducing or annulling power of taxation previously existing have been declared invalid in 13 cases (of which only four occurred within the last twenty-five years) in the following States:—Tennessee (1878); Wisconsin (1880); Louisiana (1881) (1882); Missouri (1882); Louisiana (1884); Alabama (1886); Louisiana (1886); Missouri (1887); Missouri (1891);

York *v.* State Board (1905) 199 U. S. 1; (see also 199 U. S. 48; 199 U. S. 53); *Jetton v. University* (1908) 208 U. S. 489; *Bank of Kentucky v. Kentucky* (1907) 207 U. S. 258; *St. Louis v. United Rys. Co.* (1908) 210 U. S. 266; *Citizens Nat. Bank v. Kentucky* (1910) 217 U. S. 443; *J. W. Perry Co. v. Norfolk* (1911) 220 U. S. 472.

<sup>27</sup>*Wilmington R. R. Co. v. Reid* (1872) 13 Wall. 264; *Tomlinson v. Branch* (1873) 15 Wall. 460; *Humphrey v. Pegues* (1873) 16 Wall. 244; *Pacific R. R. Co. v. McGuire* (1874) 20 Wall. 36; *New Jersey v. Yard* (1877) 95 U. S. 104; *Farrington v. Tennessee* (1878) 95 U. S. 679; *University v. People* (1879) 99 U. S. 309; *Asylum v. New Orleans* (1882) 105 U. S. 362; *Tennessee v. Whitworth* (1886) 117 U. S. 129; *Mobile etc. R. R. v. Tennessee* (1894) 153 U. S. 486; *Bank of Commerce v. Tennessee* (1896) 161 U. S. 134; *New Orleans v. Citizens Bank* (1897) 167 U. S. 371; *Stearns v. Minnesota* (1900) 179 U. S. 223; (see *Duluth etc. R. R. v. St. Louis County* (1900) 179 U. S. 302); *Citizens Bank v. Parker* (1904) 192 U. S. 73; *Powers v. Detroit etc. R. R.* (1906) 201 U. S. 543; *Amer. Sm. & Ref. Co. v. Colorado* (1907) 204 U. S. 103; *Wright v. Ga. etc. R. R.* (1910) 216 U. S. 420; *New Orleans v. Houston* (1886) 119 U. S. 265.



Missouri (1897); South Carolina (1906); Louisiana (1909).<sup>28</sup> And State laws otherwise interfering with the payment of State or municipal bonds have been held invalid, as follows: Seven laws in Pennsylvania, South Carolina, Minnesota, Illinois, Louisiana, South Carolina, and Pennsylvania, and a series of cases as to Virginia bond laws (of these cases, only three occurred within the last twenty-five years):—

Pennsylvania tax on foreign held bonds (1873); South Carolina ordinance deducting tax from city debt interest when payable (1878); Minnesota act withdrawing authority from town to subscribe to bonds (1883); Virginia act deducting tax from interest coupons (1881); Virginia act forbidding receipt of coupons on State bonds in payment of taxes (1883) (1885); Virginia bond law (1886) (1886) (1887) (1898); Virginia license tax for sale of coupons (1890); Illinois constitution forbidding municipal subscription to corporate securities when applied to previous subscriptions (1882); Louisiana lottery bond act (1882); South Carolina bond invalidation law (1886); Pennsylvania act requiring railroads to deduct tax from coupons (1894).<sup>29</sup>

On the other hand, the Supreme Court has upheld legislation altering or imposing new taxes or assessments or tax remedies in 13 cases, as follows:—

New York tax act (1875); Louisiana tax act (1875); Indiana law refunding taxes (1876); Tennessee city street tax (1878); Tennessee act repealing city charter (1880); California swamp reclamation act (1884); New Jersey highway assessment act

<sup>28</sup>*Memphis v. United States* (1878) 97 U. S. 293; (see *Memphis v. Brown* (1878) 97 U. S. 297; *Mt. Pleasant v. Beckwith* (1880) 100 U. S. 514; *Wolff v. New Orleans* (1881) 103 U. S. 358; *Ralls County Court v. United States* (1882) 105 U. S. 733; *Louisiana v. Pillsbury* (1882) 105 U. S. 278; *Louisiana v. Parish* (1884) 111 U. S. 716; *Mobile v. Watson* (1886) 116 U. S. 289; *Louisiana v. Police Jury* (1886) 116 U. S. 131; *Seibert v. United States* (1887) 122 U. S. 284; *Scotland County Court v. United States* (1891) 140 U. S. 41; *Shapleigh v. San Angelo* (1897) 167 U. S. 646; *Graham v. Folsom* (1906) 200 U. S. 248; *Louisiana v. New Orleans* (1909) 215 U. S. 170. See also *Shreveport v. Cole* (1889) 129 U. S. 36.

<sup>29</sup>*Cleveland etc. R. R. v. Pennsylvania* (1873) 15 Wall. 300; *Murray v. Charleston* (1878) 96 U. S. 432; *Red Rock v. Henry* (1883) 106 U. S. 596; *Hartman v. Greenhow* (1881) 102 U. S. 672; *Antoni v. Greenhow* (1883) 107 U. S. 769; *Poindexter v. Greenhow* (1885) 114 U. S. 270; *Chaffin v. Taylor* (1885) 114 U. S. 309; *Allen v. Balt. & O. R. R.* (1885) 114 U. S. 311; *White v. Greenhow* (1885) 114 U. S. 307; *Pleasants v. Greenhow* (1885) 114 U. S. 323; *Sands v. Edmunds* (1886) 116 U. S. 585; *Royall v. Virginia* (1886) 116 U. S. 572; *Royall v. Virginia* (1887) 121 U. S. 102; *McGahey v. Virginia* (1890) 135 U. S. 662 (and seven other cases); *McCullogh v. Virginia* (1898) 172 U. S. 102; *Clay County v. Soc. for Savings* (1882) 104 U. S. 579; *Louisiana v. Pillsbury* (1882) 105 U. S. 278; *Hagood v. Southern* (1886) 117 U. S. 52; *N. Y. etc. Ry. v. Pennsylvania* (1894) 153 U. S. 628.

(1891); Maryland repeal of tax (1902); New York succession tax (1902) (1903); New York stock transfer tax (1906); Louisiana constitution exempting property from taxation (1910); California inheritance tax (1910).<sup>30</sup>

### INTERSTATE COMMERCE CASES.

In the forty years between 1873 and 1912, the constitutionality of State statutes or State action was attacked either in the State highest courts or in the inferior Federal courts on the ground of interference with the Federal jurisdiction over interstate commerce in about 260 cases.<sup>31</sup> Of these, about 145 were concerned with legislation enacted in general for the public welfare under the State police power; while about 115 were concerned merely with questions of taxation.

### POLICE POWER LEGISLATION.

A review of the decisions on interstate commerce of the first class above noted shows that the Supreme Court has, where possible, tried to sustain the constitutionality of State laws by imputing to the State the intent to legislate under the police power reserved to the State rather than an intent to interfere with the interstate commerce powers of the National Government.

#### *Inspection Laws.*

The Court has upheld seven inspection acts as follows:—

Kentucky oil inspection act (1879); Maryland tobacco inspection act (1883); North Carolina fertilizer inspection act (1898); Missouri beer inspection fee law (1905); New Mexico hide inspection law (1906); Tennessee oil inspection act (1908); North Carolina kerosene and oil inspection acts (1912).<sup>32</sup>

<sup>30</sup>Garrison v. New York (1875) 21 Wall. 196; Morgan v. Louisiana (1876) 93 U. S. 217; Tippecanoe County v. Lucas (1876) 93 U. S. 108; United States v. Memphis (1878) 97 U. S. 284; Merriweather v. Garrett (1880) 102 U. S. 472; Hager v. Reclamation District (1884) 111 U. S. 701; Essex Public Road Ward v. Skinkle (1891) 140 U. S. 334; No. etc. R. R. v. Maryland (1902) 187 U. S. 258; Orr v. Gilman (1902) 183 U. S. 278; Blackstone v. Miller (1903) 188 U. S. 189; Chanler v. Kelsey (1907) 205 U. S. 466; Ark. & So. R. R. v. La. etc. R. R. (1910) 218 U. S. 431; Moffitt v. Kelly (1910) 218 U. S. 400.

<sup>31</sup>See the volumes of U. S. Reports from 15 Wall. to 223 U. S. inclusive. In the previous 83 years (1789-1872) the court decided only about 37 cases involving State statutes and interstate commerce.

<sup>32</sup>Patterson v. Kentucky (1879) 97 U. S. 501; Turner v. Maryland (1883) 107 U. S. 38; Patapasco Guano Co. v. No. Car. Board (1898) 171 U. S. 345; Fabst Brewing Co. v. Crenshaw (1905) 198 U. S. 17; McLean v. Denver etc. R. R. (1906) 203 U. S. 38; General Oil Co. v. Crain (1908) 209 U. S. 211; The Red Oil Mfg. Co. v. North Carolina (1912) 222 U. S. 380.

It has invalidated three as follows:—

Minnesota law requiring inspection of meats in State before slaughter (1890); Virginia law forbidding sale of meats slaughtered more than 100 miles from place of sale (1891); Virginia flour inspection act (1891).<sup>33</sup>

#### *Game Laws.*

The Court has sustained the game bird law of Connecticut (1896) and the game law of New York (1908).<sup>34</sup>

#### *Modern Economic Legislation.*

The Court has upheld the following modern legislation of an economic and financial nature:—

Alabama license for buying and selling futures (1908); Missouri act as to sales for future delivery (1911); Iowa railroad car attachment act (1910); Tennessee anti-trust act (1910); New York license act for private bankers (1911); Kansas act for regulating powder for coal mines (1912); Nebraska modified contributory negligence law (1912).<sup>35</sup>

#### *Cattle, Health, and Quarantine Laws.*

The Court has sustained nine laws relating to cattle disease and cattle quarantine, as follows:—

Louisiana quarantine laws (1886) (1900) (1902); Iowa damage from Texas fever cattle act (1888); Kansas cattle contagious disease act (1898); Texas anthrax quarantine law (1901); Idaho sheep quarantine act (1901); Colorado cattle inspection law (1902); Kansas live stock quarantine law (1908).<sup>36</sup>

It has invalidated one: Missouri act against driving Texas cattle (1878).<sup>37</sup>

<sup>33</sup>Minnesota *v.* Barber (1890) 136 U. S. 313; Brimmer *v.* Rebman (1891) 138 U. S. 78; Voight *v.* Wright (1891) 141 U. S. 62.

<sup>34</sup>Geer *v.* Connecticut (1896) 161 U. S. 519; New York *v.* Hesterberg (1908) 211 U. S. 31.

<sup>35</sup>Ware *v.* Mobile Co. (1908) 209 U. S. 405; Brodnax *v.* Missouri (1911) 219 U. S. 285; Davis *v.* Cleveland etc. R. R. (1910) 217 U. S. 157; Standard Oil Co. *v.* Tennessee (1910) 217 U. S. 413; Engel *v.* O'Malley (1911) 219 U. S. 128; Williams *v.* Walsh (1912) 222 U. S. 415; Mo. Pac. R. R. *v.* Castle (1912) 224 U. S. 541.

<sup>36</sup>Morgan's etc. S. S. Co. *v.* Louisiana (1886) 118 U. S. 455; Louisiana *v.* Texas (1900) 176 U. S. 1; Compagnie Francaise etc. *v.* La. State Board (1902) 186 U. S. 380; Kimmish *v.* Ball (1889) 129 U. S. 217; Mo. etc. R. R. *v.* Huber (1898) 169 U. S. 613; Smith *v.* St. Louis etc. R. R. (1901) 181 U. S. 248; Rasmussen *v.* Idaho (1901) 181 U. S. 198; Reid *v.* Colorado (1902) 187 U. S. 137; Asbell *v.* Kansas (1908) 209 U. S. 251.

<sup>37</sup>Railroad Co. *v.* Husen (1878) 95 U. S. 465.

*Liquor and Cigarette Laws.*

The Court has sustained prohibitory and other laws as to liquor and cigarettes in 13 cases as follows:—

Iowa liquor laws (1874) (1888) (1898) (1905); Kansas liquor prohibition laws (1884) (1891); Tennessee cigarette prohibition law (1900); Iowa cigarette law (1905); Tennessee license for selling liquors on ferry boats (1908); Georgia liquor law (1906); Kentucky liquor law (1907); South Dakota license tax on liquor drummers (1907); Alabama liquor license tax (1908).<sup>38</sup>

It has held that the operation of such laws interfered with interstate commerce in nine cases as follows:—

Texas tax on imported liquors (1880); Iowa liquor law (1888); Michigan brewer license act and tax on receipts (1890); Iowa liquor act (1890); South Carolina State dispensary law (1897); South Carolina liquor inspection law (1898); Kentucky liquor laws (1907) (1909) (1912).<sup>39</sup>

*Oleomargarine Laws.*

The Court has sustained two oleomargarine laws: Massachusetts (1894) and Ohio (1902);<sup>40</sup> and has invalidated two: New Hampshire (1898) and Pennsylvania (1898).<sup>41</sup>

*Negro Segregation Laws.*

The Court has sustained two laws relating to segregation of negroes in trains: the "Jim Crow" law of Mississippi (1890); the

<sup>38</sup>*Bartemeyer v. Iowa* (1874) 18 Wall. 129; *Kidd v. Pearson* (1888) 128 U. S. 1; *Rhodes v. Iowa* (1898) 170 U. S. 412; *Amer. Ex. Co. v. Iowa* (1905) 196 U. S. 133; *Foster v. Kansas* (1884) 112 U. S. 201; *Wilkerson v. Rahrer* (1891) 140 U. S. 545; *Austin v. Tennessee* (1900) 179 U. S. 343; *Cook v. Marshall Co.* (1905) 196 U. S. 261; *Foppiano v. Speed* (1905) 199 U. S. 501; *Heyman v. So. R. R.* (1906) 203 U. S. 270; *Adams Ex. Co. v. Kentucky* (1907) 206 U. S. 129, and two other cases; *Delamater v. South Dakota* (1907) 205 U. S. 93; *Ware & Leland v. Mobile* (1908) 209 U. S. 405.

<sup>39</sup>*Tieman v. Rinker* (1880) 102 U. S. 123; *Bowman v. Chic. & N. W. R. R.* (1888) 125 U. S. 465; *Lyng v. Michigan* (1890) 135 U. S. 161; *Leisy v. Hardin* (1890) 135 U. S. 100; *Scott v. Donald* (1897) 165 U. S. 58; *Scott v. Donald* (1897) 165 U. S. 107; *Vance v. W. A. Vandercook Co.* (1898) 170 U. S. 438; *Adams Ex. Co. v. Kentucky* (1907) 206 U. S. 129; *Adams Ex. Co. v. Kentucky* (1909) 214 U. S. 218; *L. & N. R. R. v. Cook Brewing Co.* (1912) 223 U. S. 70.

<sup>40</sup>*Plumley v. Massachusetts* (1894) 155 U. S. 461, *Capital City Dairy Co. v. Ohio* (1902) 183 U. S. 238.

<sup>41</sup>*Schollenberger v. Pennsylvania* (1898) 171 U. S. 1; *Collins v. New Hampshire* (1898) 171 U. S. 30.

Kentucky negro car law (1910);<sup>42</sup> and has invalidated one, the steamboat separate cabin law of Louisiana.<sup>42a</sup>

*Railroad Legislation.*

No subject has more engrossed the attention of State legislation during the past twenty-five years than that of the regulation of railroads. It is not surprising, therefore, that the largest number of cases tested under the interstate commerce clause involve railroad statutes.

The Court has sustained the powers of the States to control and regulate the general administration of railroads in 25 cases, as follows:—

Iowa railroad contract (1874); Alabama license law for engineers (1888); Alabama law regulating qualifications, duties, liability and color blindness of employees on interstate trains (1888); Kentucky act prohibiting consolidation of parallel lines (1896); New York railroad car stove law (1897); Minnesota interstate mail train county stop act (1897); Georgia Sunday freight train stop act (1896); Ohio train stop act (1899); Virginia, West Virginia and Missouri laws as to liability for negligence on connecting lines (1898) (1898) (1899); Iowa law as to contracts for exemption from liability (1898); California State court jurisdiction of prosecution for murder of engineer on U. S. mail train (1898); Kansas railroad speed act (1900); Minnesota track connection act (1900); New York mileage book act (1902); Pennsylvania law limiting carriers' liability for negligence (1903) (1906); Texas interstate railroad shipments (1907); Mississippi orders to standardize narrow gauge road and operate a spur track (1908); Kansas order as to railroad service to particular shipper (1909); Kansas order as to passenger service (1910); Georgia law as to speed at crossings (1910); South Carolina act penalizing failure to pay damages promptly (1910); Arkansas full crew law (1911).<sup>43</sup>

<sup>42</sup>*Louisville etc. R. R. v. Mississippi* (1890) 133 U. S. 587; *Chiles v. Ches. & Ohio R. R.* (1910) 218 U. S. 71.

<sup>42a</sup>*Hall v. DeCuir* (1878) 95 U. S. 485.

<sup>43</sup>*Dubuque R. R. Co. v. Richmond* (1874) 19 Wall. 584; *Smith v. Alabama* (1888) 124 U. S. 465; *Nashville etc. R. R. v. Alabama* (1888) 128 U. S. 96; *Louisville etc. R. R. v. Kentucky* (1896) 161 U. S. 677; *N. Y. N. H. & H. R. R. v. New York* (1897) 165 U. S. 628; *Gladson v. Minnesota* (1897) 166 U. S. 427; *Hennington v. Georgia* (1896) 163 U. S. 299; *Lake Shore etc. R. R. v. Ohio* (1899) 173 U. S. 285; *Richmond etc. R. R. v. R. G. Patterson Tobacco Co.* (1898) 169 U. S. 311; *Pittsburg etc. R. R. v. West Virginia* (1898) 172 U. S. 32; *Mo. etc. R. R. v. McCann* (1899) 174 U. S. 580; *Chic. etc. R. R. v. Solan* (1898) 169 U. S. 133; *Crossley v. California* (1898) 168 U. S. 640; *Erb v. Morasch*

The Court has on the other hand held invalid State laws or action on this subject in 13 cases, as follows:—

Texas act as to failure to deliver goods on tender of rate named in bill of lading (1895); Illinois county-seat mail train stop acts (1896) (1900); Georgia act as to initial carriers' duties (1905); North Carolina order as to car delivery on private sidings (1906); Texas act as to furnishing cars to shippers (1906); Mississippi order stopping mail trains at county seats (1906); South Carolina order as to train stops (1907); Missouri act as to train stops at junction (1910); Arkansas act requiring supply of cars to shippers (1910); Indiana act as to free passes for printing (1911); North Carolina act penalizing refusal to receive freight (1912); Washington act as to hours of labor on railroads (1912).<sup>44</sup>

The Court has sustained State regulation of railroad rates in eight cases, as follows:—

Iowa freight rate act (1873); Maryland railroad earnings act (1875); Iowa rates (1877); Wisconsin rates (1877); Minnesota rates (1877); Illinois rates (1877); Mississippi rates (1886); Arkansas rates (1888).<sup>45</sup>

It has held invalid three cases of State action: Illinois long and short haul law (1886); Kentucky long and short haul clause of State constitution (1902); Arkansas rates (1903).<sup>46</sup>

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(1900) 177 U. S. 584; *Wis. etc. R. R. v. Jacobson* (1900) 179 U. S. 287; *Erie R. R. v. Purdy* (1902) 185 U. S. 148; *Penn. R. R. v. Hughes* (1903) 191 U. S. 477; *Martin v. Pittsburg etc. R. R.* (1906) 203 U. S. 284; *Gulf etc. R. R. v. Texas* (1907) 204 U. S. 403; *Mobile etc. R. R. v. Mississippi* (1908) 210 U. S. 187; *Mo. Pac. R. R. v. Larabee etc. Co.* (1909) 211 U. S. 612; *Mo. Pac. R. R. v. Kansas* (1910) 216 U. S. 262; *So. R. R. v. King* (1910) 217 U. S. 524; *Atl. etc. R. R. v. Mazursky* (1910) 216 U. S. 122; *Chic. etc. R. R. v. Arkansas* (1911) 219 U. S. 453.

<sup>44</sup>*Gulf etc. R. R. v. Hefley* (1895) 158 U. S. 198; *Ill. etc. R. R. v. Illinois* (1896) 163 U. S. 142; *Cleveland etc. R. R. v. Illinois* (1900) 177 U. S. 514; *Central etc. R. R. v. Murphey* (1905) 196 U. S. 194; *McNeill v. So. R. R.* (1906) 202 U. S. 543; *Houston etc. R. R. v. Mayer* (1906) 201 U. S. 321; *Miss. R. R. Com. v. Ill. etc. R. R.* (1906) 203 U. S. 335; *Atl. etc. R. R. v. Wharton* (1907) 207 U. S. 328; *Herndon v. Chic. etc. R. R.* (1910) 218 U. S. 135; *Roach v. A. T. & S. F. R. R.* (1910) 218 U. S. 159; *St. L. etc. R. R. v. Arkansas* (1910) 217 U. S. 136; *Chic. etc. R. R. v. United States* (1911) 219 U. S. 486; *So. R. R. v. Reid* (1912) 222 U. S. 424 (and two other cases); *No. Pac. R. R. v. Washington* (1912) 222 U. S. 370.

<sup>45</sup>*Railroad Co. v. Fuller* (1873) 17 Wall. 560; *Railroad Co. v. Maryland* (1875) 21 Wall. 456; *C. B. & Q. R. R. v. Iowa* (1877) 94 U. S. 155; *Chic. etc. R. R. v. Ackley* (1877) 94 U. S. 179; *Winona etc. R. R. v. Blake* (1877) 94 U. S. 180; *Peik v. Chic. etc. R. R.* (1877) 94 U. S. 164; *Stone v. Farmers etc. Co.* (1886) 116 U. S. 307; *Dow v. Beidelman* (1888) 125 U. S. 680.

<sup>46</sup>*Wabash etc. R. R. v. Illinois* (1886) 118 U. S. 557; *Louisville etc. R. R. v. Eubank* (1902) 184 U. S. 27; *Hanley v. Kansas City etc. R. R.* (1903) 187 U. S. 617.

*Grain Rate Laws.*

The Court has upheld every grain rate law brought before it, as follows: Illinois grain warehouse rates (1877); New York grain elevator rate law (1892); North Dakota grain elevator rate law (1894); Minnesota grain elevator license law (1901).<sup>47</sup>

*Laws as to Navigation.*

The Court has sustained the State laws (other than tax acts) controlling rivers, ferries, bridges and canals in 11 cases as follows:—

Wisconsin dam act (1878); Illinois ferry license fee (1883); Illinois bridge act (1883); California bridge act (1885); Illinois lock toll act (1886); Michigan river improvement and toll act (1887); Oregon bridge act (1888); Ohio bridge act (1897); Illinois dock act (1903); South Carolina creek obstruction by dam act (1905); New Jersey oyster bed act (1907).<sup>48</sup>

It has held invalid the three following State laws: Georgia State compact as to river (1876); Kentucky bridge tolls law (1894); Illinois ferry for transporting cars act (1904).<sup>49</sup>

*Pilot, Harbor and Immigration Acts.*

The Court has sustained the State laws dealing with pilots and harbor control (other than tax laws) in six cases as follows:—

New York pilot law (1881); Alabama harbor improvement law (1881); Louisiana coal boat gaugers act (1895); Texas pilot law (1909); Louisiana pilot law (1909); California pilot law (1912).<sup>50</sup>

It has held invalid such laws in three cases: California immi-

<sup>47</sup>*Munn v. Illinois* (1877) 94 U. S. 113; *Budd v. New York* (1892) 143 U. S. 517; *Brass v. North Dakota* (1894) 153 U. S. 391; *W. W. Cargill Co. v. Minnesota* (1901) 180 U. S. 452.

<sup>48</sup>*Pound v. Turck* (1878) 95 U. S. 459; *Wiggins Ferry Co. v. East St. Louis* (1883) 107 U. S. 365; *Escanaba Co. v. Chicago* (1883) 107 U. S. 678; *Cardwell v. Amer. Bridge Co.* (1885) 113 U. S. 205; *Huse v. Glover* (1886) 119 U. S. 543; *Sands v. Manistee Imp. Co.* (1887) 123 U. S. 288; *Willamette etc. Co. v. Hatch* (1888) 125 U. S. 1; *Lake Shore etc. R. R. v. Ohio* (1897) 165 U. S. 365; *Manigault v. Springs* (1905) 199 U. S. 473; *Cummings v. Chicago* (1903) 188 U. S. 410; *Lee v. New Jersey* (1907) 207 U. S. 67.

<sup>49</sup>*South Carolina v. Georgia* (1876) 93 U. S. 4; *Covington & Cinn. Bridge Co. v. Kentucky* (1894) 154 U. S. 204; *St. Clair Co. v. Interstate etc. Co.* (1904) 192 U. S. 454.

<sup>50</sup>*Wilson v. McNamee* (1881) 102 U. S. 572; *Mobile Co. v. Kimball* (1881) 102 U. S. 691; *Pittsburg etc. Co. v. Louisiana* (1895) 156 U. S. 590; *Olsen v. Smith* (1904) 195 U. S. 332; *Leech v. Louisiana* (1909) 214 U. S. 175; *Anderson v. Pac. etc. Co.* (1912) 225 U. S. 187.

grant bond law (1876); Louisiana vessel inspection law (1877); Georgia pilot law (1886).<sup>51</sup>

*Marine Liens, Liabilities, etc.*

The Court has upheld six State laws as follows:—

New Jersey ship lien act (1875); Indiana act as to death from marine torts (1876); Illinois vessel lien and attachment act (1886); Minnesota log lien act (1900); Michigan vessel lien act (1907); Washington act as to lien on foreign vessels for non-maritime torts (1911).<sup>52</sup>

*Telegraph Corporation Regulation Laws.*

The Court has sustained the following four State laws regulating telegraph companies (other than tax laws):—

Georgia law as to diligence in delivery of telegrams (1896); Nebraska law for recovery of excessive charges (1901); Michigan law as to failure to deliver telegrams (1910); Virginia law as to failure to transmit promptly (1911).<sup>53</sup>

From the foregoing cases, covering in general all the State laws made in the exercise of the State police power which have been attacked on the ground of interference with interstate commerce, it appears that 106 laws were held constitutional and 38 unconstitutional (of which 29 were within the last 25 years, the Court thus holding unconstitutional an average of about one law each year). Of these 38 laws so found to be beyond the limits of the State police power, 13 were so held as regulating interstate railroad trains, and nine as regulating interstate commerce in liquor; so that with these exceptions the Court has only held invalid 16 instances of exercise of the State police power.

TAXING POWER LEGISLATION.

In addition to the above 144 cases there have been about 115 cases in which State laws enacted under the taxing power were attacked as interfering with interstate commerce; and it is in this

<sup>51</sup>*Chy Lung v. Freeman* (1876) 92 U. S. 275; *Foster v. New Orleans* (1877) 94 U. S. 246; *Sprague v. Thompson* (1886) 118 U. S. 90.

<sup>52</sup>*Edwards v. Elliott* (1875) 21 Wall. 532; *Sherlock v. Alling* (1876) 93 U. S. 99; *Johnson v. Chic. etc. Co.* (1886) 119 U. S. 388; *Lindsay & Phelps Co. v. Mullen* (1900) 176 U. S. 126; *Iroquois etc. Co. v. DeLancy etc. Co.* (1907) 205 U. S. 354; *Old Dominion S. S. Co. v. Gilmore* (1907) 207 U. S. 398; *Martin v. West* (1911) 222 U. S. 191.

<sup>53</sup>*W. U. Tel. Co. v. James* (1896) 162 U. S. 650; *W. U. Tel. Co. v. Call Pub. Co.* (1901) 181 U. S. 92; *W. U. Tel. Co. v. Commercial Milling Co.* (1910) 218 U. S. 406; *W. U. Tel. Co. v. Crovo* (1911) 220 U. S. 364.



class of cases that the Court has been obliged to hold unconstitutional the largest number of State laws. Its decisions adverse to the power of the State legislatures cannot, however, be regarded in any way as expressing divergency between the opinion of the Court and of the legislatures as to the policy of the statutes, nor as expressing any ultra-conservative or unprogressive attitude of the Court towards modern social or economic questions. Rather is it an evidence of the increasing trend of Congress to take advantage of its interstate commerce jurisdiction, and to legislate on many matters formerly left to the States alone.

The following tax legislation has been acted upon by the Court:—

*Railroad and Steamship Tax Laws.*

The Court has upheld the following 10 laws:—

Alabama license fee (1873); Pennsylvania gross receipts tax (1873); Delaware tax (1874); Maine franchise excise tax (1891); Pennsylvania railroad receipts within the State tax (1892); Indiana railroad tax (1894); Pennsylvania railroad tolls tax (1895); Michigan railroad property tax (1903); New York franchise tax (1906); Texas railroad tax (1894).<sup>54</sup>

It has held invalid the following eight:—

Pennsylvania freight tax (1873); Pennsylvania ferry company stock tax (1885); Pennsylvania steamship gross receipts tax (1887); Michigan railroad gross receipts (1887); California railroad franchise tax (1888); Texas railroad gross receipts tax (1908); Colorado railroad tax (1912); Pennsylvania license tax (1890).<sup>55</sup>

*Pullman and Refrigerator Car Tax Laws.*

The Court has upheld five State laws as follows:—

Kansas palace car tax (1891); Pennsylvania palace car tax

<sup>54</sup>*Osborne v. Mobile* (1873) 16 Wall. 479; *Phila. & Reading R. R. v. Pennsylvania* (1873) 15 Wall. 284; *Minot v. Phila. etc. R. R.* (1874) 18 Wall. 206; *Maine v. Grand Trunk R. R.* (1891) 142 U. S. 217; *Lehigh Valley R. R. v. Pennsylvania* (1892) 145 U. S. 192; *Pittsburg etc. R. R. v. Backus* (1894) 154 U. S. 421; *Cleveland etc. R. R. v. Backus* (1894) 154 U. S. 439; *N. Y. etc. R. R. v. Pennsylvania* (1895) 158 U. S. 431; *Wisconsin etc. R. R. v. Powers* (1903) 191 U. S. 379; *N. Y. C. etc. R. R. v. Miller* (1906) 202 U. S. 584; *Reagan v. Mercantile Trust Co.* (1894) 154 U. S. 413.

<sup>55</sup>*Phila. etc. R. R. v. Pennsylvania* (1873) 15 Wall. 232; *Gloucester Ferry Co. v. Pennsylvania* (1885) 114 U. S. 196; *Phila. etc. S. S. Co. v. Pennsylvania* (1887) 122 U. S. 326; *Fargo v. Michigan* (1887) 121 U. S. 230; *California v. Central Pac. R. R.* (1888) 127 U. S. 1; *Galveston etc. R. R. v. Texas* (1908) 210 U. S. 217; *A. T. & S. F. R. R. v. O'Connor* (1912) 223 U. S. 280; *Norfolk etc. R. R. v. Pennsylvania* (1890) 136 U. S. 114.

(1891); Colorado refrigerator car tax (1899); Utah refrigerator car tax (1900); Mississippi privilege tax on Pullman cars (1903).<sup>56</sup>

It has held invalid the following three: Tennessee sleeping car tax (1886) (1903); Kansas charter fee act (1910).<sup>57</sup>

*Express Company and Cab Service Tax Laws.*

The Court has upheld the following seven laws:—

Missouri express company business tax (1892); Florida express company license tax (1897); Ohio, Indiana and Kentucky express company tax acts (1897) (1897) (1897); New York franchise tax on cab service (1904); Minnesota express company tax (1912).<sup>58</sup>

It has held invalid the following three: Kentucky express company agent license act (1891); Indiana foreign express company property tax (1904); Oklahoma express company gross receipts tax (1912).<sup>59</sup>

*Telegraph and Telephone Company Tax Laws.*

The Court has upheld the following nine State laws:—

Massachusetts telegraph tax laws (1888) (1891); South Carolina license fee (1894); Mississippi franchise tax (1894); Indiana tax law (1896); Pennsylvania license for supervision of poles and wires (1903); Pennsylvania license act (1903); Missouri telegraph tax laws (1893) (1903); Pennsylvania pole license act (1904).<sup>60</sup>

It has held invalid the following eight:—

<sup>56</sup>Pullman's etc. Co. v. Hayward (1891) 141 U. S. 36; Pullman's etc. Co. v. Pennsylvania (1891) 141 U. S. 18; Amer. Refrig. Transit Co. v. Hall (1899) 174 U. S. 70; Union Refrig. Co. v. Lynch (1900) 177 U. S. 149; Pullman Co. v. Adams (1903) 189 U. S. 420.

<sup>57</sup>Pickard v. Pullman etc. Co. (1886) 117 U. S. 34; Tennessee v. Pullman etc. Co. (1886) 117 U. S. 51; Allen v. Pullman's etc. Co. (1903) 191 U. S. 171; Pullman Co. v. Coleman (1910) 216 U. S. 56.

<sup>58</sup>Pac. Ex. Co. v. Seibert (1892) 142 U. S. 339; Osborne v. Florida (1897) 164 U. S. 650; Adams Ex. Co. v. Ohio (1897) 165 U. S. 194; Adams Ex. Co. v. Indiana (1897) 165 U. S. 255; Adams Ex. Co. v. Kentucky (1897) 166 U. S. 171; Penn. R. R. v. Knight (1904) 192 U. S. 21; U. S. Ex. Co. v. Minnesota (1912) 223 U. S. 335.

<sup>59</sup>Crutcher v. Kentucky (1891) 141 U. S. 47; Fargo v. Hart (1904) 193 U. S. 490; Meyer v. Wells Fargo Co. (1912) 223 U. S. 298.

<sup>60</sup>W. U. Tel. Co. v. Massachusetts (1888) 125 U. S. 530 (the State law as to issue of injunction, being, however, held invalid); Massachusetts v. W. U. Tel. Co. (1891) 141 U. S. 40; Postal Tel. Co. v. Charleston (1894) 153 U. S. 692; Postal Tel. Co. v. Adams (1895) 155 U. S. 688; W. U. Tel. Co. v. Taggart (1896) 163 U. S. 1; Atlantic etc. Tel. Co. v. Phila. (1903) 190 U. S. 160; W. U. Tel. Co. v. New Hope (1903) 187 U. S. 419; St. Louis v. W. U. Tel. Co. (1893) 148 U. S. 92; W. U. Tel. Co. v. Missouri (1903) 190 U. S. 412; Postal Tel. Co. v. New Hope (1904) 192 U. S. 55.

Florida exclusion act (1878); Texas tax on messages (1882); Indiana regulation law (1887); Ohio tax on receipts (1888); Alabama license and property tax (1888); Pennsylvania tax on messages outside of State (1888); Alabama tax on gross receipts (1889); Pennsylvania license ordinance (1904).<sup>61</sup>

### *Foreign Corporation Tax Laws.*

The Court has sustained the following five State tax laws:—

Pennsylvania foreign corporation tax law (1888); New York tax on franchise or business (1892); Ohio filing fee (1894); New York tax on property (1898); Wisconsin tax (1903).<sup>62</sup>

It has held invalid the following five:—

Pennsylvania license fee for office in State (1890); Kansas foreign corporation law (1910); Kansas tax on capital stock of foreign corporation (1910); Arkansas tax on capital stock (1910); Kansas charter fee (1910).<sup>63</sup>

### *Salesmen Tax Laws.*

The Court has upheld the following seven State laws taxing or licensing travelling salesmen, drummers, etc.:—

Tennessee tax on sewing machine peddlers (1880); Tennessee license fee on merchandise brokers (1892); Georgia emigrant agent license tax (1900); Tennessee merchants tax (1904); Georgia tax on resident agents of foreign meat packers (1905); South Dakota liquor drummers license tax (1907); Pennsylvania retail vendor tax (1911).<sup>64</sup>

<sup>61</sup>*Pensacola Tel. Co. v. W. U. Tel. Co.* (1878) 96 U. S. 1; *W. U. Tel. Co. v. Texas* (1882) 105 U. S. 460; *W. U. Tel. Co. v. Pendleton* (1887) 122 U. S. 347; *Ratterman v. W. U. Tel. Co.* (1888) 127 U. S. 411; *Leloup v. Mobile* (1888) 127 U. S. 640; *W. U. Tel. Co. v. Pennsylvania* (1888) 128 U. S. 39; *W. U. Tel. Co. v. Alabama* (1889) 132 U. S. 472; *Postal Tel. Co. v. Taylor* (1904) 192 U. S. 64.

<sup>62</sup>*Pembina Con. Silver Min. Co. v. Pennsylvania* (1888) 125 U. S. 181; *Horn Silver Min. Co. v. New York* (1892) 143 U. S. 305; *Ashley v. Ryan* (1894) 153 U. S. 436; *New York v. Roberts* (1898) 171 U. S. 658; *Diamond Glue Co. v. U. S. Glue Co.* (1903) 187 U. S. 611. And see as to other foreign corporation laws: 113 U. S. 727; 119 U. S. 110; 132 U. S. 282.

<sup>63</sup>*Norfolk etc. R. R. v. Pennsylvania* (1890) 136 U. S. 114; *International Text Book Co. v. Pigg* (1910) 217 U. S. 91; *W. U. Tel. Co. v. Kansas* (1910) 216 U. S. 1; *Ludwig v. W. U. Tel. Co.* (1910) 216 U. S. 146; *Pullman Co. v. Kansas* (1910) 216 U. S. 56.

<sup>64</sup>*Machine Co. v. Gage* (1880) 100 U. S. 676; *Ficklen v. Shelby Co.* etc. (1892) 145 U. S. 1; *Williams v. Fears* (1900) 179 U. S. 270; *Amer. Steel & Wire Co. v. Speed* (1904) 192 U. S. 500; *Kehrer v. Stewart* (1905) 197 U. S. 60; *Delamater v. South Dakota* (1907) 205 U. S. 93; *Banker Bros. Co. v. Pennsylvania* (1911) 222 U. S. 210.

It has held invalid the following 14:—

Missouri and Wisconsin license taxes for drummers (1876) (1877); Virginia sewing-machine vendors license law (1881); Michigan non-resident liquor salesmen tax (1886); Maryland drummer tax (1887); Tennessee drummer tax (1887); Texas drummer license law (1888); District of Columbia commercial agents license tax (1889); California tax on agent to solicit business outside State (1890); Pennsylvania drummer act (1894); Tennessee drummer act (1902); North Carolina picture drummer license act (1903); Pennsylvania drummer act (1906); Alabama license for sales agents act (1910).<sup>65</sup>

*Imports and Miscellaneous Tax Laws.*

The Court has upheld the following 10 State laws dealing with property from other States or in transit:—

Louisiana tax on coal (1885); New Hampshire tax on logs (1886); Michigan tax on floating logs (1903); Missouri ordinance specifying use of Trinidad asphalt (1904); North Carolina license tax on sewing-machines shipped C. O. D. (1903); North Carolina meat packing house tax (1906); New York stock transfer tax (1907); Alabama license tax on buying and selling futures (1908); Iowa and Indiana laws as to commercial feeding stuffs (1912) (1912).<sup>66</sup>

It has held invalid the following four:—

Pennsylvania tax on original packages (1878); Wyoming tax on sheep driven through the State (1903); Tennessee tax on property product of soil of other State (1908); Kansas act prohibiting gaspipe lines (1911).<sup>67</sup>

<sup>65</sup>*Welton v. Missouri* (1876) 91 U. S. 275; *Morrill v. Wisconsin* (1877) 154 U. S. 626; *Webber v. Virginia* (1881) 103 U. S. 344; *Walling v. Michigan* (1886) 116 U. S. 446; *Corson v. Maryland* (1887) 120 U. S. 502; *Robbins v. Shelby Co.* (1887) 120 U. S. 489; *Asher v. Texas* (1888) 128 U. S. 129; *Stoutenburgh v. Hennick* (1889) 129 U. S. 141; *McCall v. California* (1890) 136 U. S. 104; *Brennan v. Titusville* (1894) 153 U. S. 289; *Stockard v. Morgan* (1902) 185 U. S. 27; *Caldwell v. North Carolina* (1903) 187 U. S. 622; *Rearick v. Pennsylvania* (1906) 203 U. S. 507; *Dozier v. Alabama* (1910) 218 U. S. 124.

<sup>66</sup>*Brown v. Houston* (1885) 114 U. S. 622; *Coe v. Errol* (1886) 116 U. S. 517; *Diamond Match Co. v. Ontonagon* (1903) 188 U. S. 82; *Field v. Barber Asphalt Co.* (1904) 194 U. S. 618; *Norfolk etc. R. R. v. Sims* (1903) 191 U. S. 441; *Armour Packing Co. v. Lacy* (1906) 200 U. S. 226; *Hatch v. Reardon* (1907) 204 U. S. 152; *Ware v. Mobile Co.* (1908) 209 U. S. 405; *Standard etc. Co. v. Wright* (1912) 225 U. S. 540; *Savage v. Jones* (1912) 225 U. S. 501.

<sup>67</sup>*Cook v. Pennsylvania* (1878) 97 U. S. 566; *Kelley v. Rhoads* (1903) 188 U. S. 1; *I. M. Darnell & Son Co. v. Memphis* (1908) 208 U. S. 113; *West v. Kan. Nat. Gas Co.* (1911) 221 U. S. 229.

*Wharfage, Vessels and Immigrant Tax Laws.*

The Court has upheld the following five State laws:—

Iowa wharfage tonnage toll ordinance (1877); Mississippi wharfage rates ordinance (1880); Kentucky wharfage fee ordinance (1882); West Virginia wharfage fees (1883); Louisiana wharfage rates act (1887).<sup>68</sup>

It has held invalid the following six:—

Alabama vessels tax law (1873); New York and Louisiana immigrant tax law (1876); Maryland discriminatory wharfage fees act (1880); New York immigrant tax law (1883); Louisiana towboat license tax law (1884); Illinois tugboat license tax law (1893).<sup>69</sup>

*Bridge and Ferry Tax Laws.*

The Court has upheld the following State laws: Kentucky bridge tax (1891) (1897) (1899); Illinois bridge stock tax (1900).<sup>70</sup>

## GENERAL SUMMARY.

The result of the above analysis of the decisions of the Court on the statutes passed under the police power and involving obligation of contract and interstate commerce (excluding all tax legislation and confining the inquiry to that legislation enacted for the general public welfare as distinguished from legislation for revenue purposes) may be summed up as follows.

Of the 158 cases on obligation of contracts, 131 statutes were held constitutional and 27 unconstitutional; but of these 27, 16 related simply to legal remedies of creditors and debtors, and only 11 to general social and economic questions.

Of the 144 cases on interstate commerce, 106 statutes were held constitutional, and 38 unconstitutional; but of these 38, 13 related to interference by the State with the running of interstate trains, and only 25 to other general social and economic questions.

<sup>68</sup>Keokuk etc. Co. v. Keokuk (1877) 95 U. S. 80; Vicksburg v. Tobin (1880) 100 U. S. 430; Cincinnati etc. Co. v. Catlettsburg (1882) 105 U. S. 559; Parkersburg etc. Co. v. Parkersburg (1883) 107 U. S. 691; Ouachita etc. Co. v. Aiken (1887) 121 U. S. 444.

<sup>69</sup>Morgan v. Parham (1873) 16 Wall. 471; Henderson v. Wickham (1876) 92 U. S. 259; Guy v. Baltimore (1880) 100 U. S. 434; New York v. Comp. Gen. Trans. (1883) 107 U. S. 59; Moran v. New Orleans (1884) 112 U. S. 69; Harman v. Chicago (1893) 147 U. S. 396.

<sup>70</sup>Henderson Bridge Co. v. Henderson (1891) 141 U. S. 679, (1897) 166 U. S. 150, (1899) 173 U. S. 592; Keokuk Bridge Co. v. Illinois (1900) 175 U. S. 626.

Of a total of 302 cases; therefore,<sup>71</sup> only 36 State statutes were held unconstitutional in 40 years, relating to the following broad classes of questions: anti-lottery laws; anti-trust and corporate monopoly laws; liquor laws; food, game, oleomargarine and other inspection laws; regulation of banks, telegraph and insurance companies; cattle, health and quarantine laws; regulation of business and property of water, gas, electric light, railroad (other than interstate trains) and other public service corporations; regulation of rates of public service corporations, grain elevators; stockholders' liability laws; regulation of business of private corporations; negro-segregation laws; labor laws; laws as to navigation, marine liens, ferries, bridges, etc., pilots, harbors and immigration.

In other words, the record proves that the United States Supreme Court has followed and still follows the wise policy expressed by Justice Woodbury, as long ago as 1848, in the following pregnant terms:

"It is to be recollected that our legislatures stand in a position demanding often the most favorable construction for their motives in passing laws, and they require a fair rather than hypercritical view of well-intended provisions in them. Those public bodies must be presumed to act from public considerations, being in a high public trust; and when their measures relate to matters of general interest, and can be vindicated under express or justly implied powers, and more especially when they appear intended for improvements, made in the true spirit of the age, or for salutary reform in abuses, the disposition in the judiciary should be strong to uphold them."<sup>72</sup>

Or, as stated more recently by Justice Brown in 1896:—

"Where the police power is invoked in good faith for the prohibition of a practice which the legislature has declared to be detrimental to the public interests, it will be sustained, wherever it can be done without the impairment of vested rights. \* \* \* The general rule holds good that whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State, and within legislative control, and in the exertion of such power the legislature is vested with a large discretion, which, if exercised *bona fide* for the protection of the public, is beyond the reach of judicial inquiry."<sup>73</sup>

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<sup>71</sup>In this summary, there is, of course, a slight duplication of cases, as a few statutes involved were attacked on more than one constitutional ground; and, therefore, several of the cases cited contained decisions on more than one point. This fact does not affect the argument, for if the Court upholds or sets aside a statute on two grounds, the effect is the same as if it had made decisions in two cases.

<sup>72</sup>*Planters' Bank v. Sharp* (1848) 6 How. 301, 319.

<sup>73</sup>*L. & N. R. R. v. Kentucky* (1896) 161 U. S. 677, 700-1.